

REMARKS

The present application has pending claims 2-5, 8-12, 14 and 15.

Request for Withdrawal of Finality of Rejection

In the Office Action mailed on November 12, 2009, the Examiner relies on U.S. Patent No. 6,041,161 to Okamoto et al. ("Okamoto") to reject claims 2-5, 8-12, 14 and 15 under 35 U.S.C. §103(a). The Examiner made the action FINAL.

However, as discussed in more detail below, Okamoto is disqualified as prior art under the provisions of 35 U.S.C. §103(c). Accordingly, because the rejection is improper, Applicants submit that the finality of the Office Action is improper.

Therefore, Applicants respectfully request that the Examiner withdraw the finality of the Office Action mailed on November 12, 2009.

35 U.S.C. §103 Rejections

Claims 2, 4 and 8 stand rejected under 35 USC 103(a) as being unpatentable over U.S. Patent No. 5,541,738 to Mankovitz ("Mankovitz") in view of U.S. Patent No. 5,448,568 to Delpuch et al. ("Depulch"), and further in view of U.S. Patent No. 6,041,161 to Okamoto et al. ("Okamoto"). **Claims 3, 5, 9-12, 14 and 15** stand rejected under 35 USC 103(a) as being unpatentable over Mankovitz, in view of Delpuch, further in view of Okamoto, and even further in view of U.S. Patent No. 5,671,095 to Arai et al. ("Arai"). These rejections are traversed for the following reasons.

I. Okamoto is Disqualified as Prior Art under 35 U.S.C. §103(c)

The present application (Application Serial No. 10/782,779) has a U.S. effective filing date of April 24, 1996, and the Okamoto reference was published on March 21, 2000, which is after the effective filing date of the present application. Accordingly, Okamoto qualifies as prior art only under one or more of subsections (e), (f), and (g) of 35 U.S.C. §102.

However, as provided in 35 U.S.C. §103(c), subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of 35 U.S.C. §102, shall not preclude patentability under 35 U.S.C. §103 where the subject matter and the claimed invention were, at the time the claimed invention was made, commonly owned, or owned by the same person or subject to an obligation of assignment to the same person. Applications and references (whether patents, patent applications, patent application publications, etc.) are to be considered by the Examiner to be owned by, or subject to an obligation of assignment to the same person, at the time the invention was made, if Applicants or an attorney or agent of record makes a statement to the effect that the application and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to the same person. (See MPEP §706.02(I)(2)(II)).

Accordingly, in response to the rejections of: claims 2, 4 and 8 under 35 USC 103(a) as being unpatentable over Mankovitz in view of Depulch, and further in view of Okamoto; and the rejection of claims 3, 5, 9-12, 14 and 15 under 35 USC 103(a) as being unpatentable over Mankovitz, in view of Delpuch, further in view of Okamoto, and even further in view of Arai, Applicants submit the following:

The present application (Application Serial No. 10/782,779) and U.S. Patent No. 6,041,161 (Application Serial No. 08/972,457) to Okamoto were, at the time the invention of Application Serial No. 10/782,779 was made, owned by Hitachi, Ltd.

As described in MPEP 706.02(I)(2)(II), this statement alone is sufficient evidence to disqualify U.S. Patent No. 6,041,161 to Okamoto from being used in a rejection under 35 U.S.C. §103(a) against the claims of the present invention. Therefore, Applicants respectfully request the Examiner to reconsider and withdraw this rejection.

In view of the foregoing remarks, Applicants submit that claims 2-5, 8-12, 14 and 15 are in condition for allowance. Accordingly, early allowance of claims 2-5, 8-12, 14 and 15 is respectfully requested.

To the extent necessary, the applicants petition for an extension of time under 37 CFR 1.136. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, or credit any overpayment of fees, to the deposit account of BRUNDIDGE & STANGER, P.C., Deposit Account No. 50-4888 (referencing Attorney Docket No. 500.34521CC3).

Respectfully submitted,

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